IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 986 of 2005

with

CIVIL APPLICATION No 3298 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARGAVI KAMALKUMAR TRIPATHI

Versus

KAMALKUMAR HASMUKHBHAI TRIPATHI

Appearance:

MR KUNJAL D PANDYA for Appellant

MR KG PANDIT for Respondent

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 26/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Admit. Mr. Pandit, appearing on Caveat, waives service for the respondent - husband. On the joint request of the learned counsel for the parties, the matter is taken up today for final disposal and is disposed of by this judgment.

2. Heard the learned counsel for the parties - Shri Pandya for the appellant - wife and Shri Pandit for the respondent - husband.

3. The appellant - wife has filed Family Suit No.188 of 2001 against her husband for divorce whereas the respondent - husband filed Family Suit No.105 of 2001 for restitution of conjugal rights. However, the respondent - husband agreed to give consent for divorce. Therefore, both the suits were disposed of by Mrs. K.M. Vin, learned Judge, Family Court No.2, Ahmedabad by her impugned common judgment and decree dated 13th January, 2005 whereby the learned Judge decreed Family Suit No.188 of 2001 filed by the appellant - wife and passed a consent decree of divorce and disposed of counter Family Suit No.105 of 2001 filed by the respondent - husband for restitution of conjugal rights as having become infructuous, in view of the decree of divorce. Earlier the husband had deposited Rs.25,000/-, which was also ordered to be paid to the wife. The learned Judge further directed the husband either to deposit or pay the wife an additional amount of Rs.1,50,000/-, by way of permanent alimony, within two months from the date of the order. Accordingly, the husband has deposited additional amount of Rs.1,50,000/- also. It is stated at the bar by learned counsel Shri Pandit for the respondent - husband that the appellant - wife had withdrawn Rs.25,000/- which was already deposited by the respondent - husband and further amount of Rs.1,50,000/-, deposited by the husband after passing of the decree of divorce. Thus, in all, Rs.1,75,000/- is already withdrawn by the appellant wife. Be that as it may. Mr. Pandya for the appellant - wife has no instructions about it. Mr. Pandit for the respondent - husband states that if the amount is not withdrawn so far, then the same may be withdrawn by the wife.

4. The appellant - wife has filed this appeal only against the amount of permanent alimony of, in all, Rs.1,75,000/- fixed by the learned Judge as, according to

her, it should not be less than Rs.5,00,000/-, considering the income and status of the respondent husband and all other surrounding circumstances of the case. However, Mr. Pandit submitted that the respondent - husband was, in fact, aggrieved with this amount of Rs.1,75,000/- but only with a view to put an end to this litigation, he has not preferred any appeal and challenged the same before this court. He, therefore, submitted that this court should not interfere with such order of permanent alimony fixed by the learned Judge in this appeal.

5. Mr. Pandit for the respondent - husband further submitted that in the instant case, a consent decree of divorce was passed, therefore, appeal at the instance of wife under Section 19(2) of the Family Courts Act, 1984 would not be maintainable. This submission of Mr. Pandit has no substance because the appellant - wife has not challenged the consent decree of divorce but she has challenged fixing of the amount of permanent alimony of, in all, Rs.1,75,000/- by the learned Judge.

5.1 Mr. Pandit then submitted that in absence of prayer for permanent alimony, the learned Judge ought not to have awarded any amount by way of permanent alimony. Permanent alimony and maintenance can always be awarded by the court exercising its jurisdiction under the Hindu Marriage Act, 1955, as provided under Section 25 of the said Act, at any time of passing of the decree or even subsequent thereto, on application made to it, either oral or written. In fact, in the instant case, there was already an application moved for amendment praying for permanent alimony but somehow or the other, it is not dealt with by the learned Judge. In view of this, it cannot be said that the learned Judge has committed any error in awarding permanent alimony.

6. The only question left to be decided in this appeal is as to whether the amount of Rs.1,75,000/- in all, fixed by the learned Judge by way of permanent alimony is just and proper or not. We find from the judgment of the learned Judge that for fixing the figure of, in all, Rs.1,75,000/- the learned Judge has not discussed any material on record of the case namely, the status of the respondent - husband, his income and other surrounding circumstances of the case and all of a sudden, abruptly, she has come to the conclusion that in addition to Rs.25,000/- deposited by the husband, Rs.1,50,000/- would be sufficient. Thus, according to the learned Judge, in all, Rs.1,75,000/- was just and proper.

7. If there was any discussion on the part of the learned Judge for fixing the amount of Rs.1,75,000/- then there would have been different consideration but there is nothing on the record to show that the learned Judge has come to this conclusion rightly. It may be stated that earlier Family Court itself has fixed interim alimony of Rs.3,000/- per month. It is, no doubt, true that the matter was remanded to the Family Court by this court but this was a relevant aspect to be considered by the learned Judge. Nowadays, rate of interest has come down to 6% and on Fixed Deposit it would not be more than 8%. Even courts are awarding interest at the rate of maximum 9%. In view of this, we are of the considered opinion that when the learned Judge has not stated anything in her judgment and decree for awarding in all , Rs. 1,75,000/- by way of permanent alimony then, in our considered opinion, the matter may be sent back to the learned Judge for her reconsideration.

8. In view of the above discussion, this appeal is allowed only to the extent that the impugned judgment and decree passed by the learned Judge awarding permanent alimony of, in all, Rs.1,75,000/- is hereby quashed and set aside and the matter is remitted to the learned Judge for her reconsideration for awarding just and proper amount by way of permanent alimony. It is made clear that the amount of Rs.1,75,000/- awarded by the learned Judge shall remain with the appellant - wife. On remand, the learned Judge will pass fresh order of awarding permanent alimony as early as possible preferably, on or before 30th September, 2005, after considering the entire evidence and material led before her by both the respective parties. It was assured by both the learned counsel for the parties that the parties shall not ask for any unnecessary adjournment before the learned Judge and see to it that the matter is finally decided by the learned Judge on the point of permanent alimony as early as possible preferably on or before 30th September, 2005.

Writ to be sent down forthwith.

No order on Civil Application for stay, in view of the order passed in the main appeal.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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